



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop
DENVER, CO 80202-1195
Phone 800-227-8917
<http://www.epa.gov/region08>

2007 FEB -1 PM 1:42

LPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2005-0013

IN THE MATTER OF:

GIL HAUGEN CONSTRUCTION, INC

RESPONDENT

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)

ORDER GRANTING FILING OF
FACSIMILE SIGNATURE PAGE
and FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The facsimile filing of the signature page in this matter is accepted at this time, however the parties are to file the original signature page within seven days of issuance of this Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 1st Day of February, 2007

Kerrigan D. Clough Acting for
Robert E. Roberts
Regional Administrator

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
LPA REG. CWA VPM
HEARING ROOM EPA

IN THE MATTER OF:)	CONSENT AGREEMENT
)	
Gil Haugan Construction, Inc.)	
)	Docket No. CWA-08-2005-0013
)	
Respondent.)	
_____)	

Complainant, United States Environmental Protection Agency ("EPA"), Region 8, and Respondent, Gil Haugan Construction, Inc., by their undersigned representatives, hereby consent and agree as follows:

I. JURISDICTION

1. On March 18, 2005, Complainant issued a Penalty Complaint and Notice of Opportunity for Hearing ("Complaint") alleging certain violations by Respondent of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, pertaining to storm water regulation. The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent consents to the jurisdiction of EPA for the sole purpose of the settlement and enforcement of this Consent Agreement, and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint.

II. BINDING EFFECT

4. This Consent Agreement ("Agreement"), upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Consent Agreement contains all terms of the settlement agreed to by the Parties.

III. DEFINITIONS

5. Except as specifically provided in this Agreement, definitions for terms used in this Agreement shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to that Act. Whenever the terms listed below are used in this Agreement, the following definitions apply:

- a. "BMPs" or "best management practices" shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States as well as treatment requirements, operating procedures, and practices to control construction site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- b. "Clean Water Act" shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.
- c. "Day," unless otherwise specified, shall mean calendar day.

d. "Notice of Intent" shall mean a request for coverage under the South Dakota General Permit.

e. "Respondent" shall mean Gil Haugan Construction, Inc.

f. "Site" shall mean any location in South Dakota for which Respondent either (i) has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other conditions of the South Dakota General Permit (e.g., is authorized to direct workers at a site to carry out activities required by the SWPPP or to comply with other conditions of the South Dakota General Permit) and at which there is or will be construction resulting in ground-disturbing activities greater than or equal to one acre or which is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. § 122.26(b)(14)(x) or 40 C.F.R. § 122.26(b)(15).

g. "South Dakota General Permit" shall mean the South Dakota General Permit for Storm Water Discharges Associated With Construction Activities, Permit No. SDR10####, and any amendments thereto.

h. "SWPPP" shall mean the Storm Water Pollution Prevention Plan specified in the South Dakota General Permit.

IV. CIVIL PENALTY

6. Respondent consents and agrees that on or before thirty (30) days after the date of a signed final order in this matter, Respondent shall pay a civil penalty in the amount of TWENTY-NINE THOUSAND NINE HUNDRED AND 00/100 DOLLARS (\$29,900.00).

Payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA. 15251-6859

Payment made via overnight delivery:

U.S. EPA, 360859
Mellon Client Service Center, Room 154-0670
500 Ross Street
Pittsburgh, PA 15262-6859

Wire Transfers:

Alternatively, payment may be made by wire transfer. Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68010727

At the same time payment is made, a copy of the check and any enclosed documentation, or confirmation of the wire transfer, shall be sent to:

Jennifer Meints (8ENF-W-NP)
Environmental Engineer
U.S. EPA Region 8,
1595 Wynkoop
Denver, CO 80202-1129

and

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

7. A payment is considered late if it is not received by Mellon Bank on the stated due date. Payments must be received by 11:00 a.m. EST to be considered as received that day.

8. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).

9. In addition to the accrual of interest specified in Paragraph 8 of this Agreement, a handling charge of FIFTEEN DOLLARS (\$15.00) shall be assessed the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

10. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

11. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount by the payment due date, at Complainant's discretion the full penalty amount proposed in the Complaint shall become due and owing by Respondent.

V. STIPULATED PENALTIES

12. The Parties agree that the following stipulated penalties will apply to the specified actions, or failures to act, by Respondent that occur within one (1) year from the date of the final order:

- a. For failure to submit a Notice of Intent or otherwise obtain a permit for any Site, failure to prepare a SWPPP for any Site, failure to have the SWPPP available at the Site, or failure to have the letter of authorization granting coverage under the South Dakota General Permit or an individual National Pollutant Discharge Elimination Permit available at a Site, \$1,200 per day per violation;
- b. For each deficiency in a SWPPP for a Site, including any failure to update the SWPPP, \$1,000 per day per violation;
- c. For failure to install a BMP as required by the SWPPP and the South Dakota General Permit, \$2,500 per day per violation for each BMP not installed;
- d. For improper installation of a BMP, improper maintenance of a BMP, and the installation of an inadequate BMP, \$1,750 per day per violation for each BMP improperly installed or maintained and for each inadequate BMP installed;
- e. For failure to conduct the periodic inspections required under the South Dakota General Permit, \$6,000 for each inspection;
- f. For failure to prepare a periodic inspection report that contains all information required for such reports pursuant to the South Dakota General Permit, \$6,000 for each inadequate inspection report;

g. For failure to maintain periodic inspection reports on-site where such reports can be maintained in a secure location protected from the weather, or to otherwise make such reports readily available upon request, \$6,000 for each report;

h. For failure to take any corrective action identified by a periodic inspection, \$1,200 per day for the first ten days of each violation, and \$6,000 per day for each subsequent day of each violation, provided, however, that Respondent shall have seven (7) calendar days from the date of the periodic inspection where a violation is identified, to take corrective action to remedy the violation before stipulated penalties begin to accrue for that violation, provided further, however, that in order to avoid the imposition of stipulated penalties, Respondent must document the date that the corrective action was implemented. The provision in this subparagraph allowing Respondent seven (7) calendar days to take corrective action to remedy a violation identified in a periodic inspection in order to avoid the imposition of stipulated penalties does not relieve Respondent of its obligations regarding revision and implementation of the SWPPP set forth in the South Dakota General Permit.

13. Payment of Stipulated Penalties. All stipulated penalties owed to Complainant by Respondent under this Section shall be due and payable within thirty (30) days of Respondent's receipt of Complainant's demand for stipulated penalties unless Respondent invokes the procedures under Section VI (Dispute Resolution). Payment of stipulated penalties and notification that the stipulated penalties have been paid shall be made in accordance with the instructions set forth in Section IV (Civil Penalty) of this Agreement.

14. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day that the action or failure specified in paragraph 12 of this Agreement occurs and shall continue to accrue through the final day or correction of the action or failure or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for the acts or failures specified in paragraph 12 of this Agreement. Stipulated penalties shall accrue regardless of whether Complainant has notified Respondent of a violation.

15. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement of the Parties or by a decision of the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

16. Interest on Late Payment. If Respondent fails to pay stipulated penalties when due, Respondent shall pay interest at the rate established by the Secretary of the Treasurer under 31 U.S.C. § 3717 beginning upon the day the stipulated penalties were due.

17. Non-Exclusivity of Remedy. Stipulated penalties are not Complainant's exclusive remedy for the actions or failures specified in paragraph 12 of this Agreement. Complainant expressly reserves the right to seek any other relief it deems appropriate, including, but not limited to, action for statutory penalties or injunctive relief against Respondent. However, the amount of any statutory penalty assessed for the actions or failures specified in paragraph 12 of this Agreement shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to the Agreement for the same violation.

VI. DISPUTE RESOLUTION

18. Only those disputes arising due to a decision by EPA to impose stipulated penalties pursuant to this Agreement or EPA's determination regarding the duration of a specified action or failure to act in calculating the amount of stipulated penalties pursuant to this Agreement shall be subject to dispute resolution. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve any such disputes.

19. In order to invoke the dispute resolution procedures of this Agreement, Respondent shall submit a written Notice of Dispute to Complainant within ten (10) days of the action Respondent seeks to dispute. Such Notice of Dispute shall state clearly the matter in dispute. The dispute shall be considered to have arisen on the day Complainant receives Respondent's Notice of Dispute.

20. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Agreement shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by Complainant shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures set forth in paragraph 21 of this Agreement.

21. Formal Dispute Resolution.

a. Within fifteen (15) days after the conclusion of the informal negotiation period set forth in paragraph 20 of this Agreement, Respondent may invoke the formal dispute resolution procedures of this Section by serving on Complainant a written

Statement of Position on the matter in dispute. Respondent's Statement of Position shall include, but is not limited to, any factual data, analysis or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent.

b. Within fifteen (15) days after receipt of Respondent's Statement of Position, Complainant shall serve on Respondent its Statement of Position.

Complainant's Statement of Position shall include, but is not limited to, any factual data, analysis or opinion supporting Complainant's position and any supporting documentation relied upon by Complainant.

c. Statements of Position, and any other communications related to this Section, shall be served by same day or overnight delivery, by the United States Postal Service, Certified Mail, Return Receipt Requested, or by hand-delivery, and be addressed to counsel of record as of the date the final order is issued approving this Agreement (or to substitute counsel as provided by notice to such counsel of record) and to:

Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice
1595 Wynkoop
Denver, CO 80202-1129

d. Following receipt of the Parties' Statements of Position submitted pursuant to this Paragraph, the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, will issue a written decision resolving the dispute. The decision of the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, is

final and not subject to appeal and shall be incorporated into and become an enforceable part of this Agreement.

e. In any dispute under this Paragraph, Respondent shall bear the burden of demonstrating that its position complies with this Agreement, the Clean Water Act, and the provisions of the South Dakota General Permit.

22. The invocation of the dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondent under this Agreement not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in this Agreement. Notwithstanding the stay of payment, stipulated penalties shall accrue from the day that the action or failure specified in paragraph 12 of this Agreement occurs and shall continue to accrue through the final day or correction of the action or failure or completion of the activity. In the event that the Settling Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V (Stipulated Penalties).

VII. CONTINUED DUTY TO COMPLY

23. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

VIII. ENFORCEMENT OF THE AGREEMENT

24. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States

Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

25. Nothing in this Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

IX. GENERAL PROVISIONS

26. Pursuant to 33 U.S.C. § 1319(g)(4), on April 18, 2005, public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

27. The Parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

28. Each party shall bear its own costs and attorneys fees in connection with this matter.

29. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of Gil Haugan Construction, Inc., Respondent
Docket No. CWA-08-2005-0013

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 1/30/07

By: Michael T. Bisne for
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: 1/30/07

By: Sheldon H. Muller
Sheldon H. Muller
Enforcement Attorney
Amy Swanson
Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

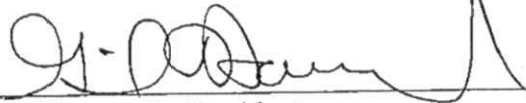
In the Matter of Gil Haugan Construction, Inc., Respondent
Docket No. CWA-08-2005-0013

GIL HAUGAN CONSTRUCTION, INC.,
Respondent.

Date: _____

1/29/07

By: _____



Gil Haugan, Jr., President
Gil Haugan Construction, Inc.

Date: _____

1/29/07

By: _____



Brian J. Donahoe, Esq.
CUTLER & DONAHOE, LLP
100 N. Phillips Avenue, 9th Floor
Sioux Falls, SD 57104-6725

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED ORDER GRANTING FACSIMILE SIGNATURE FILING AND CONSENT AGREEMENT/FINAL ORDER** in the matter **GIL HAUGAN CONSTRUCTION, INC., DOCKET NO.: CWA-08-2005-0013** was filed with the Regional Hearing Clerk on February 1, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Sheldon H. Muller, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on February 1, 2007, to:

Brian J. Donahoe, Esq.
Cutler & Donahoe, LLP
100 North Phillips Avenue, 9th Floor
Sioux Falls, SD 57104-6725


Pouch mailed to:

Honorable Carol Charneski
Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW (1900L)
Washington, DC 20460

Telefaxed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268
513-487-2063

February 1, 2007


Tina Artemis
Paralegal/Regional Hearing Clerk



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